

## **AMENDMENTS TO THE CLAIMS**

The following listing of claims will replace all prior versions and listings of claims in the application.

### **LISTING OF CLAIMS**

1.-40. (Cancelled)

41. (Currently Amended) A system for controlling content delivery to an audience using a concurrent delivery system that delivers content to at least a first portion of said audience over a channel-tuned broadcast spectrum and to at least a second portion of said audience over an addressable network using an Internet protocol, comprising:

an aggregate audience interaction monitor system that monitors said addressable network and generates at least one audience metric corresponding to aggregate usage by plural persons within said second portion of said audience;

content delivery system that has access to a plurality of content elements, said content delivery system being controlled by said audience interaction monitor system and being operative to automatically select content elements in real time and actively deliver said selected content elements to said first and second portions of said audience based on said at least one audience metric.

42. (Previously Presented) The system of claim 41 wherein said audience interaction monitor stores historical data reflecting said usage by said second portion of said audience.

43. (Previously Presented) The system of claim 41 wherein said audience metric is an audience level metric characterizing the aggregate of said first portion of said audience.

44. (Previously Presented) The system of claim 43 wherein said audience level metric comprises a surrogate metric characterizing the aggregate of said second portion of said audience.

45. (Previously Presented) The system of claim 41 wherein said audience metric is a gain/loss metric characterizing change in usage by said second portion of said audience.

46. (Previously Presented) The system of claim 41 wherein said audience metric reflects usage as a function of time.

47. (Previously Presented) The system of claim 41 wherein said audience metric reflects usage associated with at least one content element.

48. (Previously Presented) The system of claim 41 wherein said content delivery system includes an automated decision system having an associated set of business rules used in conjunction with said audience metric to select content elements for delivery.

49. (Previously Presented) The system of claim 48 wherein said business rules are configured to maximize said audience.

50. (Previously Presented) The system of claim 48 wherein said business rules are configured to maximize audience for selected content elements.

51. (Previously Presented) The system of claim 48 wherein said business rules are configured to maximize audience for selected content elements by temporally placing said selected content elements after other content elements having an associated audience metric above a predetermined level.

52. (Previously Presented) The system of claim 48 wherein said business rules reflect contract-specified monetary values associated with at least a portion of said content elements

53. (Previously Presented) The system of claim 52 wherein said business rules are configured to use said monetary values to maximize advertising profits.

54. (Previously Presented) The system of claim 41 wherein said audience interaction monitor system captures location information about members of said first portion of said audience.

55. (Previously Presented) The system of claim 41 wherein said audience interaction monitor system captures location information about members of said first portion of said audience and wherein said content delivery system delivers content to said second portions of said audience selectively based on said location information.

56. (Previously Presented) The system of claim 41 wherein at least a portion of said content elements correspond to a contractual relationship between a broadcasting entity and an advertising entity and wherein said contractual relationship has contractual terms that depend upon said at least one audience metric.

57. (Previously Presented) The system of claim 56 wherein said contractual terms specify a monetary incentive to the broadcasting entity based at least in part on said at least one audience metric.

58. (Previously Presented) The system of claim 56 wherein said contractual terms specify favored lead content elements and provide for the delivery of such favored lead content elements under predefined conditions.

59. (Previously Presented) The system of claim 56 wherein said contractual terms specify a monetary incentive to the broadcasting entity to refrain from delivering content elements when audience levels are below specified levels.

60. (Previously Presented) The system of claim 56 wherein said contractual terms specify a monetary incentive to the broadcasting entity to selectively deliver predetermined content elements when audience levels are above specified levels.

61. (Previously Presented) The system of claim 56 wherein said contractual terms associate a plurality of advertising content elements with said advertising entity and further provide monetary incentive to the broadcasting entity to preferentially broadcast selected one of said advertising content elements based on accumulated empirical information on audience level gains and losses associated with such advertising content elements.

62. (Currently Amended) A method for adjusting media content transmitted to an audience comprising:

simulcasting the media content to the audience and to a surrogate audience comprising plural persons;

monitoring at least one aggregate response of the surrogate audience to the media content and audience characteristics of the surrogate audience; and automatically adjusting the media content in real time based on said monitoring.

63. (Previously Presented) The method of claim 62, wherein said monitoring substantially occurs in real time.

64. (Previously Presented) The method of claim 62, wherein said adjusting substantially occurs in real time.

65. (Previously Presented) The method of claim 62, wherein said simulcasting corresponds to:

performing at least one of a traditional broadcast and traditional narrowcast, wherein media content is distributed to members of the audience via at least one of airwaves and cable; and

performing at least one of a streaming broadcast and a streaming narrowcast via Internet technology, wherein streaming media content is distributed to a member of the surrogate audience in response to a stream request.

66. (Previously Presented) The method of claim 65, wherein said monitoring corresponds to measuring media content consumption of a surrogate audience member.

67. (Previously Presented) The method of claim 66, wherein said measuring occurs relative to geographic location of the surrogate audience member.

68. (Previously Presented) The method of claim 66, wherein said measuring occurs relative to demographic data of the surrogate audience member.

69. (Previously Presented) The method of claim 66, wherein said measuring occurs relative to domain type of the surrogate audience member.

70. (Previously Presented) The method of claim 62, wherein said media content is defined in terms of content elements, and wherein said adjusting corresponds to:

assigning a status to a content element based on said monitoring;  
determining whether to include the content element in an imminent transmission based on the assigned status; and  
reflecting results of said determining in the imminent transmission.

71. (Currently Amended) A method for increasing audience for media content, wherein the media content comprises content elements, comprising:

monitoring in aggregate a previous audience response to a content element;  
determining in real time whether to include the programming element in an imminent transmission based on said monitoring; and  
reflecting results of said determining in the imminent transmission.

72. (Previously Presented) The method of claim 71 further comprising:  
simulcasting the media content to an audience and a surrogate audience;  
and

deeming that the response of the surrogate audience is representative of the response of the audience.

73. (Previously Presented) The method of claim 71 further comprising monitoring current audience characteristics.

74. (Previously Presented) The method of claim 72 further comprising:  
monitoring current audience characteristics; and  
deeming that the audience characteristics of the surrogate audience are representative of the audience characteristics of the audience.

75. (Previously Presented) The method of claim 73, wherein the content element corresponds to a programming element, the method further comprising assigning a favored lead status to the programming element based on favorable audience response, wherein said determining corresponds to resolving to include the programming element in the imminent transmission when audience level is high based on the favored lead status.

76. (Previously Presented) The method of claim 71, wherein the content element corresponds to an advertising element, wherein said monitoring corresponds to detecting an unfavorable audience response, and wherein said determining corresponds to resolving not to include the advertising element in the imminent transmission based on the unfavorable audience response.



77. (Previously Presented) The method of claim 76, wherein the disfavored advertising element has an associated sponsor, wherein the imminent transmission corresponds to a next available spot for the associated sponsor, and wherein said reflecting corresponds to replacing the disfavored advertising element with an advertising element of the associated sponsor that is not disfavored.

78. (Currently Amended) A method for increasing advertising profits in a media content distribution system, wherein the media content comprises advertising elements, comprising:

monitoring current aggregate audience characteristics prior to delivery of an advertising element;

determining in real time whether to include the advertising element in an imminent transmission based on said monitoring; and

reflecting results of said determining in the imminent transmission.

79. (Previously Presented) The method of claim 78 further comprising:  
simulcasting the media content to an audience and a surrogate audience;  
and

deeming that the current audience characteristics of the surrogate audience are representative of the current audience characteristics of the audience.

80. (Previously Presented) The method of claim 78, wherein a portion of the advertising elements have a condition associated with satisfactory delivery, and wherein said determining corresponds to detecting whether the condition is met.

81. (Previously Presented) The method of claim 80, wherein said delivering corresponds to delivering an advertising element included in the portion only if the condition is met.

82. (Previously Presented) The method of claim 80, wherein said delivering corresponds to delivering an advertising element not included in the portion if the condition is not met.

83. (Previously Presented) The method of claim 78, wherein at least one advertising element is a premium advertising element compared to at least one other non-premium advertising element, wherein said monitoring corresponds to detecting a current audience level, and wherein said determining corresponds to resolving the include the premium advertising element in the imminent transmission in favor of the non-premium advertising element when the current audience level is high.

84. (Previously Presented) The method of claim 78, wherein said monitoring occurs in real time, and wherein said determining is based on audience characteristics proximate in time to the delivery.

85. (Currently Amended) A system for controlling content delivery to an audience population using an addressable network, comprising:

an audience interaction monitor system that monitors said addressable network and generates at least one audience metric corresponding to aggregate usage by plural persons within a first portion of said audience population;

content delivery system that has access to a plurality of content elements, said content delivery system being controlled by said audience interaction monitor system and being operative to automatically select content elements in real time and actively deliver said selected content elements to said audience population in response to said at least one audience metric.